IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

C.W.P. No.13986 of 2005
Date of Decision:02.04.2007

M/s Sardar Bahadur Rice Mills, Tarn Taran Road, Amritsar and others

.....Petitioners

Vs.

Punjab and Sind Bank, Asset Recovery Branch, Amritsar and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Rohit Suri, Advocate for the petitioners.

Mr. I.P.Singh, Advocate for respondents No.1 to 3.

****

Rajesh Bindal J.

The challenge in the present petition is to order dated 17.08.2005 (Annexure P.20) passed by the Recovery Officer, Debts Recovery Tribunal, Chandigarh (for short, `the Tribunal') directing for auction of the properties of the petitioners for recovery of the decretal amount and seeking a direction to the respondent- Bank to settle and honour the compromise dated 15.2.2002 (Annexure P.1) arrived at between the parties and tripartite agreement dated 12.5.2005 (Annexure P.15).

Briefly, the facts are that petitioner No.1-frim (hereinafter referred to as the petitioner) was running a rice mill through its partners. For the purpose, the petitioner had raised certain loans from the respondent-Bank by mortgaging its properties. On account of default in repayment thereof, the Bank filed application before Debts Recovery Tribunal, Chandigarh (for short, `the DRT') which was decreed in favour of the respondent- Bank for a sum of Rs. 45.30 lacs with future interest on 3.4.1998. Thereafter, the petitioner approached the bank for one time settlement of the account and vide communication received through the

counsel for the bank dated 20.2.2002, the petitioner was informed that the bank was agreeable to settle the account for a total sum of Rs. 23 lacs along with PLR simple. 25% of the settlement amount, i.e., Rs.5.75 lacs was to be paid within two months and rest of the amount within 12 months from the intimation of the settlement. It was specifically mentioned therein that in case of failure, the bank will be at liberty to pursue action against the petitioner. Part of the amount was deposited by the petitioner towards the settlement. But the entire amount was not deposited within stipulated period as per the terms of the one time settlement. However, on the request of the petitioner, vide communication dated 28.10.2003, the period for repayment of the balance amount was extended up to 31.12.2003 subject to the condition that the petitioner was required to pay interest at the rate of PLR (prevailing at the time of original settlement, compounded quarterly on the settled amount with effect from 20.2.2002 i.e., date of intimation of terms of settlement. As regard the title deeds of the three properties, it was mentioned that the same shall be released immediately on credit of the sale proceeds of the properties and on the party making good the shortfall, if any, in the amount payable to the bank along with upto date interest. Still the petitioner instead of paying the amount, represented to the bank for extension of time till March 31, 2004 and further it was requested that the time may be extended further upto 30.6.2004 and then upto 31.3.2005 by raising various pleas. However, the bank did not accede to the request of the petitioner for extension of time for deposit of the amount as per the one time settlement, which expired on 31.12.2003. A copy of tripartite agreement dated 12.5.2005 entered into between the petitioner, Shri Anil Mehra, alleged buyer of the property and the respondent- Bank through its Manager has been placed on record by the petitioner to submit that the bank having failed to adhere to the conditions of the tripartite agreement, the petitioner has suffered on account of the backing out of the bank. As per clause six of the tripartite agreement, the same was subject to approval by the Head Office. As is evident from letter dated 11.8.2005, (Annexure P.19), the approval was not accorded as the validity of the one time settlement had already expired since long, i.e., on 31.12.2003. In the execution petition filed by the bank, the Recovery Officer vide order dated 17.8.2005 directed for sale of the properties of the petitioner and fixed the

schedule therefor.

The primary contention raised by learned counsel for the petitioner is that the bank was bound by the tripartite agreement entered into between the parties to which the Manager of the respondent- Bank was a signatory. Though the factum of any authority with the Manager to sign such an agreement has been refuted by the respondent- Bank and still approval in terms of para six of the tripartite agreement dated 12.5.2005 was also declined by the Head Office vide letter dated 11.08.2005.

The petition has been contested by the respondent- Bank by raising preliminary objection about the availability of alternative remedy in terms of Section 30 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993. It has further been submitted that the petitioner was a wilful defaulter having not repaid the loan raised from the bank and the same was not paid even after the decree passed by the DRT on 3.4.1998. Still further even after the one time settlement offer accepted by the respondent- Bank on 20.2.2002 for payment of the amount within one year and its further extension up to 31.12.2003, the petitioner did not repay the amount in terms thereof and had been making one excuse or the other. As regards to the tripartite agreement, it was submitted that the bank manager did not have any authority to enter into any such agreement for payment of the amount in terms of one time settlement, the validity of which had already expired wayback on 31.12.2003. Seeing the totality of the circumstances and the conduct of the petitioner, who is a wilful defaulter, it was submitted that he is not entitled to any relief whatsoever.

On March 9, 2007, after hearing learned counsel for the parties at some length, this Court passed the following order:-

> "During the course of arguments, it has transpired that an amount of Rs.23 lacs was settled between the parties to be paid initially within a period of 12 months from the date of settlement, i.e. 20.2.2002. Thereafter, even that date had expired on 31.12.2003 by stipulating that the amount would be released with interest. However, the petitioners were not able to pay the afore-mentioned amount by the date fixed, i.e., 31.12.2003. It is claimed that the Branch Manager had entered into a tripartite agreement, i.e., between the petitioner, bank

and the buyer, who were to purchase the third property belonging to the petitioners. That tripartite settlement has not been approved by the head office. The total demand of the respondent- bank is not available on record.

Mr. I.P.Singh, learned counsel for the respondents No.1 to 3 requests for some time to apprise the Court as to the amount which will be acceptable for final settlement is due to the Bank."

On the resumed hearing on the next date, the respondent- Bank produced before this Court, a letter dated 12.3.2007 containing the entire details about the amount due against the petitioner, the amount acceptable at present and also the value of the properties available with them as security. It was mentioned that as per the decree, the amount recoverable upto 10.3.2007 is Rs. 259.22 lacs and as against it, the amount acceptable to the bank is Rs. 125.99 lacs, i.e., decreetal amount of Rs. 45.30 lacs plus simple interest of Rs.80.69 lacs thereon. The total value of the properties mortgaged with the bank was assessed at Rs. 70.91 lacs. However, the proposal was not acceptable to the petitioner as he was sticking on the earlier one time settlement figure accepted by the bank in 2002 and also the plea that the Bank was liable to release the title deeds of the properties already sold by him though at a cheaper rate.

After hearing learned counsel for the parties and in the light of the facts mentioned above, we are of the considered view that the petitioner is not entitled to any relief whatsoever in the present writ petition.

A perusal of the facts on record shows that from the very beginning the intention of the petitioner is not bonafide. He is a wilful defaulter. Even the one time settlement arrived at between the parties whereby the bank had given substantial relief to the petitioner, was not adhered to inspite of there being an extension of time also. It is too late in the day for the petitioner to invoke the extraordinary jurisdiction of this Court seeking a direction to the bank to adhere to the terms of the one time settlement which already stood expired on 31.12.2003 on account of default by the petitioner. As far as tripartite agreement is concerned, even though the bank is refuting the jurisdiction or authority of the manager of the bank to enter into such an agreement but still even as per clause six of the said

agreement, the permission, therefor, was also declined by the head office. Accordingly, the petitioner cannot base his claim on that agreement as well. The concession of one time settlement, by granting relief in interest is granted by the banks not to the wilful defaulters but to the loanees who for the reasons beyond their control are unable to repay the debt. In the present case, the facts do not speak in that direction. For the loan raised by the petitioner as term loan and cash credit limit in 1994, the bank having filed a suit in 1997, the decree having passed wayback on 3.4.1998 and in one time settlement, the bank having been settled the amount due for a sum of Rs. 23 lacs only on 20.2.2002, still the petitioner did not adhere to the terms of the agreement. The bank was still generous in extending the time for complying with the terms of one time settlement upto 31.12.2003 which was originally expired on 19.2.2007. But still the same remained not complied with. Even now the bank is ready to settle the due amount as per decree plus simple interest but the same is not acceptable to the petitioner.

Accordingly, we do not find any reason to interfere in the writ petition and dismiss the same.

(RAJESH BINDAL)
JUDGE

April 02, 2007 **(M.M.KUMAR)**
renu **JUDGE**